

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS

STATE OF TEXAS,

Plaintiff,

v.

MERRICK GARLAND, in his official capacity as
Attorney General, *et al.*,

Defendants.

Case No. 5:23-cv-00034-H

**DEFENDANTS' APPENDIX IN SUPPORT OF THEIR MOTION
TO RE-SET THE MOTIONS HEARING, STRIKE PLAINTIFF'S FOUR WITNESSES,
OR CONTINUE THE TRIAL**

Table of Appendix

Bates Stamps	Description
App001-003	Email from Ethan Szumanski to Michael Gaffney (Nov. 7, 2023)

Dated: November 16, 2023

Respectfully submitted,

BRIAN M. BOYNTON
Principal Deputy Assistant Attorney General

JOHN R. GRIFFITHS
Director, Federal Programs Branch

LESLEY FARBY
Assistant Branch Director

/s/ Michael J. Gaffney
MICHAEL J. GAFFNEY (D.C. Bar No.
1048531)
CLAYTON L. BAILEY (D.C. Bar No. 1644867)
Trial Attorneys
United States Department of Justice
Civil Division, Federal Programs Branch
1100 L Street, N.W.
Washington, D.C. 20005
Tel: (202) 514-2356

Fax: (202) 616-8470

Email: michael.j.gaffney@usdoj.gov

Counsel for Defendants

CERTIFICATE OF SERVICE

I hereby certify that on November 16, 2023, I electronically filed the foregoing paper with the Clerk of Court using this Court's CM/ECF system, which will notify all counsel of record of such filing.

/s/ Michael J. Gaffney

MICHAEL J. GAFFNEY (D.C. Bar No. 1048531)

Trial Attorney

United States Department of Justice

Civil Division, Federal Programs Branch

1100 L Street, N.W.

Washington, D.C. 20005

Tel: (202) 514-2356

Fax: (202) 616-8470

Email: michael.j.gaffney@usdoj.gov

From: [Ethan Szumanski](#)
To: [Gaffney, Michael J. \(CIV\)](#)
Cc: [Ryan Walters](#); mmiller@texaspolicy.com; ncurtisi@texaspolicy.com; cweldon@texaspolicy.com; ncurtisi@texaspolicy.com; rhenneke@texaspolicy.com; [Bailey, Clayton L. \(CIV\)](#)
Subject: [EXTERNAL] RE: 5:23-cv-34 - Texas v. Garland - Declarations
Date: Tuesday, November 7, 2023 12:00:10 PM
Attachments: [image001.png](#)

Mike,

Texas agrees to both of your points. Specifically, Texas agrees that the parties will not object to the admissibility of the exchanged declarations on the ground that they constitute hearsay, and Texas agrees that live witnesses will not be necessary for the upcoming November 28 bench trial.

Should you feel it necessary to discuss these matters further, please feel free to reach out to us.

Best,



Ethan Szumanski
Special Counsel
Special Litigation Division
Office of the Texas Attorney General
P.O. Box 12548 (MC 009)
Austin, TX 78711-2548
Phone: (512) 717-1255
Fax: (512) 457-4410
ethan.szumanski@oag.texas.gov

This message may be confidential or privileged under Government Code sections 552.101, 552.103, 552.107, and 552.111 and should not be disclosed without the express authorization of the Attorney General.

From: Gaffney, Michael J. (CIV) <Michael.J.Gaffney@usdoj.gov>
Sent: Tuesday, November 7, 2023 10:38 AM
To: Ethan Szumanski <Ethan.Szumanski@oag.texas.gov>
Cc: Ryan Walters <Ryan.Walters@oag.texas.gov>; mmiller@texaspolicy.com; ncurtisi@texaspolicy.com; cweldon@texaspolicy.com; ncurtisi@texaspolicy.com; rhenneke@texaspolicy.com; Bailey, Clayton L. (CIV) <Clayton.L.Bailey@usdoj.gov>
Subject: RE: 5:23-cv-34 - Texas v. Garland - Declarations

All,

As we move closer to the November 28 trial date, I wanted to loop back on a few topics we've discussed previously.

First, in our initial conversations after the court's Rule 65(a)(2) notice, we discussed a possible agreement between the parties that we would not object to the admissibility of the exchanged declarations on the ground that they themselves constitute hearsay. I said that we would be open to reaching an agreement on that as our offices have done in other cases,

but that I thought we should wait to exchange the declarations before discussing further. Now that we've done that, Defendants would be willing to agree that we will not object to the admissibility of the parties' declarations on the basis that they constitute hearsay. Is Texas still interested in reaching an agreement on that front?

Second, we've also discussed whether each side intends to put on live witnesses. We remain interested in discussing that more general point and would be happy to do that before next week's deadlines. But, for now, we would be willing to agree that the parties do not need sponsoring witnesses to introduce any documents (including declarations) at the November 28 trial, which is how we would envision the bulk of the evidence coming in. Does Texas agree with that as well?

If easier to discuss by phone, we can get on a call later today.

Finally, you'll see that I've copied Clayton Bailey, who is a trial attorney in our office who has joined this matter. He will be entering his NOA shortly.

Best,

Mike

From: Gaffney, Michael J. (CIV)

Sent: Wednesday, November 1, 2023 6:44 PM

To: Ethan Szumanski <Ethan.Szumanski@oag.texas.gov>

Cc: Ryan Walters <Ryan.Walters@oag.texas.gov>; mmiller@texaspolicy.com; ncurtisi@texaspolicy.com; cweldon@texaspolicy.com; ncurtisi@texaspolicy.com; rhenneke@texaspolicy.com

Subject: 5:23-cv-34 - Texas v. Garland - Declarations

All,

I have received your email but have not attempted to access the declarations yet. I'll separately confirm that I can access them shortly. Before I open them, I wanted to transmit the five declarations attached here. Please note that we've marked the fourth one confidential and included a footnote (on the last page) explaining the basis for providing the information contained in that declaration.

Hope you all are well.

Best,

Mike

Michael Gaffney

Trial Attorney

Federal Programs Branch, Civil Division

U.S. Department of Justice

202-514-2356

michael.j.gaffney@usdoj.gov

From: Ethan Szumanski <Ethan.Szumanski@oag.texas.gov>
Sent: Wednesday, November 1, 2023 6:01 PM
To: Gaffney, Michael J. (CIV) <Michael.J.Gaffney@usdoj.gov>
Cc: Ryan Walters <Ryan.Walters@oag.texas.gov>; mmiller@texaspolicy.com;
ncurtisi@texaspolicy.com; cweldon@texaspolicy.com; ncurtisi@texaspolicy.com;
rhenneke@texaspolicy.com
Subject: [EXTERNAL] 5:23-cv-34 - Texas v. Garland, et al. - Texas's Declarations

Counsel,

Pursuant to the November 1 declaration deadline ordered by the Court, *see* ECF No. 75, Texas hereby provides the declarations it anticipates using for the upcoming bench trial. Please confirm that you have received and are able to access the attached declarations.

Best,



Ethan Szumanski
Special Counsel
Special Litigation Division
Office of the Texas Attorney General
P.O. Box 12548 (MC 009)
Austin, TX 78711-2548
Phone: (512) 717-1255
Fax: (512) 457-4410
ethan.szumanski@oag.texas.gov